

ARKANSAS SUPREME COURT

No. CR 06-785

NOT DESIGNATED FOR PUBLICATION

HOSEA L. SIMMONS
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered November 16, 2006

PRO SE MOTION FOR COPY OF
DOCUMENTS AT PUBLIC EXPENSE
[CIRCUIT COURT OF IZARD
COUNTY, CR 2004-65]

MOTION DENIED.

PER CURIAM

Petitioner Hosea L. Simmons is an inmate in the custody of the Arkansas Department of Correction. A judgment and commitment order entered November 1, 2004, indicates that petitioner entered a negotiated plea of guilty to first-degree battery and received a sentence of 120 months' imprisonment. Petitioner filed in the trial court a petition for postconviction relief under Ark. R. Crim. P. 37.1 on April 4, 2006, which was denied. His appeal of that order in this court was dismissed on the State's motion without written decision. *Simmons v. State*, CR 06-785 (Ark. dismissed Oct. 5, 2006) (*per curiam* order).

Petitioner has now submitted to this court a request for copies of his trial transcript, an additional transcript of discussions regarding plea negotiations, and his plea agreement, invoking the Arkansas Freedom of Information Act, Ark. Code Ann. §§ 25-19-101 – 107 (Supp. 2005), and providing an affidavit to verify indigency in support of his request to provide the copies at public

expense.¹ He gives no reason for this request, simply asserting that he is entitled to have the documents provided to him without charge.

The only materials on file with this court concerning petitioner are those concerning his appeal of the order denying relief under Rule 37.1. The record lodged in that appeal does not contain any transcription of the plea hearing, or any transcription of discussions concerning the plea, or any transcription whatsoever. It does contain a copy of the plea agreement that petitioner requests. However, because petitioner has offered nothing to demonstrate that photocopies of the materials on file with this court should be provided to him at no cost, we must deny the motion.

Petitioner contends that the materials must be provided to him without charge because he is an indigent prisoner and proceeding *pro se*. Yet, the Freedom of Information Act does not require an appellate court to provide photocopying at public expense. *Moore v. State*, 324 Ark. 453, 921 S.W.2d 606 (1996) (*per curiam*). Nor does the mere fact that petitioner is indigent entitle him to a copy of the transcript at public expense. *Washington v. State*, 270 Ark. 840, 606 S.W.2d 365 (1980) (*per curiam*). A petitioner is not entitled to photocopying at public expense unless he or she demonstrates some compelling need for *specific* documentary evidence to support an allegation contained in a petition for postconviction relief. *Williams v. State*, ___ Ark. ___, ___ S.W.3d ___ (Nov. 4, 2004), citing *Moore, supra*; see *Austin v. State*, 287 Ark. 256, 697 S.W.2d 914 (1985) (*per curiam*). Petitioner makes no reference to a need for documentary evidence to support an allegation for post-conviction relief, or even that post-conviction relief is available to him.

¹For clerical purposes, the motion has been filed under the docket number assigned to the appeal of the order denying petitioner postconviction relief that was lodged in this court. This court decides motions for transcript because such motions are considered to be requests for postconviction relief. See *Williams v. State*, 273 Ark. 315, 619 S.W.2d 628 (1981).

When an action has been filed in this court, the material pertaining to it remains permanently on file with the clerk. Unless it is being maintained under seal, persons may review the material in the clerk's office and photocopy all or portions of it. An incarcerated person desiring a photocopy of a material on file here may write this court, remit the photocopying fee, and request that the copy be mailed to the prison. All persons, including prisoners, must bear the cost of photocopying. *Moore*, 324 Ark. at 455, 921 S.W.2d at 607.

Motion denied.

Glaze, J., not participating.